))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 222 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DENIPI COLOUR LAB

Versus

PHOTOPHONE INDUSTRIES INDIA LTD

Appearance:

1. Appeal from Order No. 222 of 1995

MR MANISH R BHATT for Petitioner No. 1

Mr.CHETAN PANDYA for MR SV RAJU for Respondent No. 1

MR ASIM J PANDYA for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 04/10/2001

ORAL JUDGEMENT

1. The appellant - plaintiff has challenged in this Appeal the impugned order dated 23.9.1994 passed by the

learned Judge of City Civil Court No.19, Ahmedabad, below Ex.6 in Regular Civil Suit No. 5871 of 1993 whereby the learned Judge dismissed the Application.

2. Mrs.Bhatt, learned Counsel for the appellant vehemently submitted that in the instant case the learned Judge has committed grave error in dismissing the Application Ex.6. She submitted that the appellant plaintiff is made to suffer both hands. On one hand notice issued by the Customs Department and on the other hand the opponent No.1 - original defendant No.1 played fraud upon the appellant - plaintiff. She submitted that when the appellant - plaintiff has not received the delivery of the goods then there was no question of paying the amount claimed in the Notice by the defendant No.2 Customs Department.

3. As against that the learned Counsel Shri Ashim Pandya appearing for the Customs Department submitted that before filing the Suit before the trial Court at Ahmedabad, the appellant - plaintiff and the defendant No.1 have jointly filed writ petition No.3802 of 1990 before the Bombay High Court. While admitting the said petition by way of interim order they were allowed to clear the said photo finishing machinery on their giving Bank guarantee of 25 % of the difference of duty and executing the personal bond for the remaining amount of 50 %. accordingly the plaintiff furnished the Bank Guarantee of Rs.1,68,378/-. However, the said writ petition was ultimately dismissed by the Bombay High Court against which the plaintiff approached the Supreme Court by way of filing Special Leave Petition (C) No. 8561 of 1992 which was also dismissed by the Supreme Court. Thus, according to Shri Pandya there was no question of fraud being played upon the appellant plaintiff by the defendant No.1. According to Shri Pandya both, the appellant - plaintiff as well as the defendant No.1, with a view to pay less custom duty they initially filed writ petition and when the writ petition and Special Leave Petition were dismissed later on they filed Civil Suit before the City Civil Court, Ahmedabad. He submitted that because of the interim order passed on Civil Application filed in this Appeal the respondent Department is made to suffer as there is great loss of public revenue. He submitted that once the trial Court has come to the conclusion that the plaintiff is the importer of the machine then it was liable to pay the amount by way of duty as demanded in the Notice. It is hardly matters who got delivery. Shri Pandya, therefore, submitted that no interference is called for by this Court against the impugned order passed by the trial

Court as the trial Court has rightly come to the conclusion that the appellant - plaintiff has no prima facie case.

4. Shri Chetan Pandya appearing for Shri S.V.Raju for the defendant No.1 submitted that according to defendant No.1 the delivery of the machine was already handed over by it to the appellant - plaintiff.

5. Considering the rival submissions made by the respective learned Counsel for the parties I am of the considered opinion that no interference is called for with the impugned order passed by the learned Judge rejecting the Application Ex.6. Once the trial Court comes to the conclusion that the appellant - plaintiff failed to prove prima facie case in its favour then it will not be entitled for any discretionary relief. Admitted fact is that the appellant - plaintiff is the importer of the machines, therefore, irrespective of the fact that whether it has received delivery of the machine or not it is liable to pay the duty. Such demand can not be stayed. Merely because the appellant plaintiff filed Suit for specific performance against the defendant No.2 it would not be a ground to grant any interim relief in favour of the appellant - plaintiff either by the trial Court or by this Court.

6. Before parting, I must state that I have refrained myself in dealing with the rival submissions in detail because any observation made by this Court is likely to come in the way of parties in the final disposal of the Suit.

7. In view of the above discussion this Appeal fail and is dismissed.

8. At this stage the request is made by Ms. Bhatt to continue the ad.interim relief granted earlier by this Court on Civil Application with direction to the trial Court to decide the Suit as early as possible. Shri Pandya, learned counsel appearing for the respondent No.2 - Customs Department has no objection if the Suit is expedited, but he has strongly objected for grant of interim relief or continuation of it any more because the Government is suffering huge loss by way of revenue. According to him the Court should rarely interfere with the revenue matters. He submitted that when this Court finds that the appellant has no case in Appeal and that the Appeal is dismissed then there is no question of continuing the interim relief till final disposal of the Suit. If this prayer is granted then it means that though

the Appeal is dismissed the appellant - plaintiff ultimately succeeded.

9. There is a lot of substance in what is submitted by Shri Pandya for the Customs Department. Ordinarily this Court does not interfere in revenue matters particularly when the trial Court refused to exercise any discretion in favour of the plaintiff when it has come to the conclusion that the plaintiff has no prima facie case. Once this Court has come to the conclusion that the present Appeal has no merit then though there may be interim order passed in favour of the appellant plaintiff at the time of admission of the Appeal on Civil Application, but this would not be a ground to continue interim relief any more. Continuation of interim relief till the final disposal of the Suit means that though this Appeal is dismissed on merit indirectly it is allowed. Hence the request to continue interim relief granted on Civil Application has to be rejected and it is rejected.

10. However, on peculiar facts and circumstances of the case the trial Court is directed to expedite the hearing of Regular Civil Suit No.587 of 1993 and dispose of the same as early as possible and not later than 30th October 2002. The parties shall fully cooperate with the final disposal of the Suit.

As the main Appeal is dismissed, Civil Application No.1677 of 1995 is dismissed. Interim relief granted earlier stands vacated forthwith. Rule discharged.

Date : October 04, 2001 (B.J.Shethna, J.)

sas